

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

STEVEN MILLARD DUBOSE, and  
JEFFREY THOMAS SMITH,

Plaintiffs,

v.

PARKVALE SAVINGS BANK, ET AL.,

Defendants.

Case No.: C 11-06727 PSG

**ORDER THAT CASE BE  
REASSIGNED WITH  
RECOMMENDATION THAT  
PLAINTIFF'S APPLICATION TO  
PROCEED IN FORMA PAUPERIS BE  
DENIED**

Pending before this court is Plaintiffs Steven Dubose and Jeffrey Smith's ("Plaintiffs") Application to Proceed *In Forma Pauperis* ("IFP").<sup>1</sup> Based on the application and the file herein,

IT IS HEREBY ORDERED that this case be reassigned to a District Judge<sup>2</sup> with the recommendation that the IFP be denied.

Granting or refusing permission to proceed *in forma pauperis* is a matter within the sound discretion of the trial court.<sup>3</sup> It is the court's duty to examine any IFP application "to determine

<sup>1</sup> The holding of this court is limited to the facts and particular circumstances underlying the present motion.

<sup>2</sup> This court is ordering reassignment to a District Judge because, absent consent of all parties, a Magistrate Judge does not have the authority to make case-dispositive rulings. *See, e.g., Tripathi v. Rison*, 847 F.2d 548, 548-49 (9th Cir. 1988).

<sup>3</sup> *See Shobe v. People of State of California*, 363 F.2d 545, 545 (9th Cir. 1966).

whether the proposed proceeding has merit and if appears that the proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in forma pauperis.”<sup>4</sup> Moreover, a federal court must dismiss a case such as this if the court determines that the case: 1) is frivolous; 2) fails to state a claim on which any relief may be granted; or 3) seeks monetary relief against a defendant who is immune from such relief.<sup>5</sup>

The court has reviewed the complaint and here finds it impossible to assess the merits of Plaintiffs’ claims. The information presented appears to be generated by a computer parsing program that produced a mishmash of references to alleged facts and statutory citations. The court is able to ascertain that Plaintiffs seek to bring an unlawful detainer action against Defendants. It is well-settled, however, that federal courts do not have federal question jurisdiction over unlawful detainer actions, because federal law does not create the cause of action and the plaintiff’s right to relief does not depend on a resolution of a question of federal law.<sup>6</sup> To make matters worse, Plaintiffs do not plead facts sufficient for the court to ascertain whether they have a claim for unlawful detainer. Although pro se complaints are held to “less stringent standards than formal pleadings drafted by lawyers,”<sup>7</sup> Plaintiffs still must allege facts sufficient to allow this court to determine whether a claim has been stated.<sup>8</sup>

The court notes that Plaintiffs may amend the complaint as a matter of course pursuant to Fed. R. Civ. P. 15(a)(1).<sup>9</sup> Should Plaintiffs decide to amend the complaint, the court directs them to

---

<sup>4</sup> *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

<sup>5</sup> *See* 28 U.S.C. § 1915(e)(2).

<sup>6</sup> *See, e.g., Eden Housing Mgmt., Inc. v. Muhammed*, No. C 07-4325 SBA, 2007 WL 4219397, at \*2-3 (N.D. Cal. No. 28, 2008) (holding that there is no federal question on the face of an unlawful detainer complaint); *Citibank N.A. v. Ortiz*, No. 08-cv-1301 LAB, 2008 WL 4771932, at \*1 (S.D. Cal. Oct. 28, 2008).


<sup>7</sup> *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

<sup>8</sup> *See Silva-Peterson v. BAC Home Loans Servicing, LP*, C 11-01491 SI, 2011 WL 2633406, at \*2 (N.D. Cal. July 5, 2011) (citing *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)).

<sup>9</sup> *See id.* (holding that dismissal of a pro se complaint without leave to amend is proper only if it is absolutely clear that the deficiencies in the complaint could not be cured by the amendment).

the example pleadings included in the appendix of forms for the federal rules, as well as the services of the Federal Legal Assistance Self-Help Center at the San Jose Courthouse.

Dated: 2/9/2012



PAUL S. GREWAL  
United States Magistrate Judge